IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9056 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANLAL MAGALDAS PATEL
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance :
MR KV SHELAT for Petitioner(s) : 1,
MR JASWANT K SHAH, ASSTT GOVERNMENT PLEADER for Respondent Nos.1,2,7
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 3.
None for Respondent(s) : 3,5 - 7.
MR SP MAJMUDAR for Respondent(s) : 3.2.2, 3.2.3, 3.2.4,3.2.5
MR VIMAL A PUROHIT for Respondent(s) : 3.2.2, 3.2.3, 3.2.4,3.2.5
MR PM BHATT for Respondent(s) : 4 - 5, 5.2.2,5.2.3 - 6,6.2.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 10/10/2007

ORAL JUDGMENT

1. **RULE.** Mr. Jaswant K. Shah, learned Assistant Government Pleader, waives service of Rule for

respondent Nos.1,2 & 7, Mr. S.P. Majmudar, learned advocate, waives service of Rule for respondent Nos.3/1 to 3/5 and Mr. P.M. Bhatt, learned advocate, waives service of Rule for respondent Nos.4,5 and 6.

2. Heard the learned advocates for the respective parties. Few facts giving rise to the present litigation are as under:

2.1. The petitioner is an owner of an agricultural land, bearing Survey No.165 (Block No.135) of village Kudasan, Taluka & District Gandhinagar, and respondent Nos.4, 5/1 to 5/3, 6/1 and 6/2 who are successors of Nathaji Becharji Thakore, the original vendor of the said land bearing Survey No.165 (Block No.135) executed registered sale deed on 11.04.1991 in favour of the petitioner and Entry No.2135 in that regard was also posted on 12.04.1991 and confirmed in the Revenue Record of said (Survey No.165) Block No.135 and admittedly such sale or revenue entry was never challenged by any one nor

it was the subject matter of any litigation, between the parties to this petition.

3. It is stated that one Maganbhai Desalbhai Vaghari i.e. predecessor of respondent Nos.3/1 to 3/5, filed RTS proceedings before the Prant Officer, Gandhinagar being RTS HR/28/29/82, and challenged Entry No.217 which was in favour of the predecessor of respondent Nos.4 to 6 pertaining to Survey Nos.152,153 and 155, on the basis of oral sale and subsequent succession Entry No.1311 with respect to said Survey Nos. 152, 153 and 155 only. It appears that Prant Officer by his order dated 09.03.1984 came to the conclusion that Entry 217 was based on oral sale and consequently said Entry No.217 with respect to Survey Nos. 152, 153 and 155 was cancelled, and similarly the consequent succession Entry No.1311 with respect to said Survey numbers also stood cancelled. The said order of the Prant Officer was confirmed upto this Court in Special Civil Application No.8891 of 1999.

As a matter of fact, Entry No. 1311 was also in respect of 4th property being Survey No.165. It is important to note that Survey No.165 (Block No.135) was never the subject matter of litigation before any court of law. However, it appears that since Entry No.217 was cancelled and based on that Entry No.1311, pertaining to succession of all Survey numbers, including Survey No.165 (Block No.135), was also treated cancelled in entirety, the Revenue Authority, mistakenly placed Entry No.2902 and temporary Entry No.4141 dated 02.01.2007 in respect of Block No.135 (Revenue Survey No.165). This is a result of total misconception of fact on the part of Revenue Authority.

4. Learned Assistant Government Pleader Mr. Jaswant K. Shah has stated that having regard to the previous RTS proceedings, it is clear that Block No.135 (Survey No.165) was not the subject matter. The learned Assistant Government Pleader could not justify the passing of Entry No. 2902

and temporary Entry No.4141 to the extent it was made applicable to Block No.135- original Survey No.165.

5. Learned advocate Mr. Majmudar for respondent Nos. 3/1 to 3/3 submitted that the petitioner has an alternative remedy. But, the fact is that his clients have never claimed nor challenged the title of the petitioner in respect of Block No.135 (Survey No.165) of Village Kudasan.

Learned advocate Mr. Bhatt for respondent Nos. 4 to 6 supports the case of the petitioner.

6. In view of the aforesaid facts and submissions made by the respective parties, it is clear that in the earlier orders passed by the Prant Officer as well as the Collector and the Additional Chief Secretary, the subject matter of litigation was Survey Nos.152,153 and 155 only and (Survey No.165) Block No.135 was not the subject matter of previous RTS proceedings which became final upto the High Court in Special Civil

Application No.8891 of 1999 decided on 5.11.1999, the papers of which are also called for at the time of admission of this matter for perusal. The petitioner herein has become owner of Survey No.165 (Block No.135) ever since registered sale deed of 1991 which transaction is never challenged and is not the subject matter of any litigation between the parties and the inevitable conclusion is that succession Entry No.1311 so far as it concerns to (Survey No.165) Block No.135, continued and it stood cancelled only vis-a-vis Survey Nos. 152, 153 and 155 only and under the circumstances, impugned Entry No.2902 in so far it relates to Block No.135 (Survey No.165) and Entry No.4141 regarding petitioner's Block No.135 are quashed and set aside. Necessary correction in the revenue record of (Survey No.165) Block No.135 of Village Kudasan, Taluka and District Gandhinagar is directed to be made by the Revenue Authorities and Entry No.1311 with respect to said Block No.135 (Survey No.165) of Village Kudasan be restored in relation to Survey

No.165, in conformity with the findings given in this judgment, forthwith. The present petition is allowed. Rule is made absolute as aforesaid.

(RAVI R. TRIPATHI, J.)

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